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In The

# Supreme Court of the United States

October Term, 1996

AUDAY MAKI AND SALWA ATWAN,

*Petitioners,*

v.

WILLIAM LAAKKO AND BEVERLY LAAKKO,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit**

## RESPONDENTS WILLIAM LAAKKO AND BEVERLY LAAKKO'S BRIEF IN OPPOSITION TO PETITIONERS AUDAY MAKI AND SALWA ATWAN'S PETITION FOR WRIT OF CERTIORARI

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## COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether Petitioners' late-raised claim that this case involves discriminatory impact against "familial status" presents a case or controversy for decision by the United States Supreme Court where such a claim had no factual or legal support, and was not raised, in the courts below?

2. Whether the purported "confusion" argued by Petitioners concerning the definition of "familial status" is relevant in this case, where the courts below found that Petitioners did not present any evidence that discrimination on the basis of familial status was exercised against them, in which Petitioners have never claimed or supported a claim of discrimination by disparate impact, and where Petitioners in any case do not present any actual conflict between the decision below and the other cases cited in the Petition?

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Respondents William Laakko and Beverly Laakko (the "Laakkos" or "Respondents") submit this Brief in opposition to Petitioners Auday Maki and Salwa Atwan's Petition for Writ of Certiorari.

## JURISDICTION

Petitioners are seeking to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(a). However, Petitioners cannot establish jurisdiction under 28 U.S.C. § 1257, because they have not shown that the discriminatory impact claim which they are asserting in their Petition was properly "set up or claimed" in the prior court proceedings.

## COUNTER-STATEMENT OF THE CASE

The Opinion of the Sixth Circuit in this case sets forth a succinct and accurate statement of the case which is in no way controverted by Petitioners. Petitioners do not, in this appeal, even attempt to argue or claim that the undisputed facts set forth by the courts below were in any way deficient or erroneous.

Petitioners' statement of the case, in fact, is wholly deficient and does not set out the facts material to the consideration of the questions presented. See Rules of the Supreme Court of the United States, Rule 14.1(g). Nor does the Petition provide the accuracy, brevity or clarity which is essential to an understanding of the case – which in itself is sufficient cause for the denial of the Petition.

See Rules of the Supreme Court of the United States, Rule 14.4.

In short, this case involves the abusive attempt by an associate law school professor, Stephen Safranek, to "punish" the Respondents for having the temerity to raise the rent on a flat rented by Safranek's friends, the Petitioners. As the Sixth Circuit noted in its Opinion:

> We note that the resolution of this dispute has been far from costless. The Laakkos attempted to raise the rent on an apartment by $ 50 per month, which was wholly within their rights. . . . As a result of the current creative and artful (though meritless) lawsuit instituted by a law professor, the Laakkos have been forced to incur at least $ 36,000 in legal fees (see original counsel's motion to withdraw), even before oral argument in this case. Events such as this tend to bring into disrepute both the legal profession and laws originally passed to address serious social ills.

*Maki* v. *Laakko*, 88 F.3d 361, 368 (6th Cir. 1996) (Petitioners' App. at 15a-16a).[1] Given the deficiencies in the Petition, it

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[1] Moreover, those fees have just been the tip of the iceberg. After the district court dismissed the state law counts without prejudice, Safranek re-filed those counts, and additional counts, in the Circuit Court for the County of Wayne, State of Michigan. The state court case was litigated to a conclusion, with the entry of the court's "Order For Entry of Judgment After Mediation, Less Attorney Fees and Sanctions Awarded Against Stephen Safranek, Auday Maki and Salwa Atwan For Failure to Comply With This Court's Order Imposing Sanctions." However, bringing the case to that end was extremely costly, as Safranek needlessly compounded the proceedings. See *Maki* v. *Laakko*,

appears that the Petition is merely another excuse for Safranek to put the Laakkos to additional expense.

The facts essential to an understanding of this case begin in June of 1992, when the Laakkos purchased a two-flat housing unit in Grosse Pointe Park, Michigan. The lower flat was already occupied by the Petitioners, who had rented from the previous owner since September of 1990, and who had been month-to-month tenants since the expiration of their lease in August of 1991. 88 F.3d at 363. After living in the house for nearly three years without any rent increases, the Petitioners were presented with a modest increase in June of 1993. *Id.* (Petitioners' App. at 2a-3a).

In response to the rent increase, Petitioners decided to move – but only after their friend Safranek threatened Beverly Laakko by telling her that he was a professor at the University of Detroit and connected both with the University and politically in the community, and that he would sue her for discrimination. R.43, Exhibit C: B. Laakko Deposition at pp. 76-77.

After several exchanges between Safranek and Michael Drew, who represented the Laakkos in the negotiation of the Petitioners' move, Petitioners did move as a "product of a negotiated solution reflecting the fact that the Makis no longer wished to be tenants of the Laakkos, but wanted some time to move." 88 F.3d at 364 (Petitioners' App. at 6a). See also 88 F.3d at 364-365 (Petitioners' App. at 7a-8a).

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Case No. 95-503275-CK (Wayne County, Michigan, Circuit Court).

Nonetheless, Safranek filed a federal lawsuit, unhappy that the Petitioners' security deposit was withheld due to the extensive damage which they had done to the rental unit. The Petitioners' Second (and final) Amended Complaint sets forth a series of petty grievances, followed by conclusory pleading of purported causes of action. Count 7 of the Complaint, the only count that relates to the Petition, alleges in its entirety:

> 45. Plaintiffs reincorporates [*sic*] all previous paragraphs.
>
> 46. The actions of the defendants constituted a violation of 42 U.S.C. § 3601 et seq. of the Fair Housing Act.

R.15 at p. 6. The Complaint thus made no mention of acts of intentional discrimination and did not in any way allege discriminatory impact.

Faced with a Motion for Summary Judgment, Petitioners again relied upon no more than conclusions, arguing that they were "protected" by the fact that they "are from Iraq (national origin) and they have children (familial status)." R.48 at page 14. However, Petitioners presented no evidence to support the conclusory claim, and made no mention of "discriminatory impact," merely alleging irrelevant matters (i.e., claiming that there was discrimination against children by virtue of the raising of rent ***on the other flat*** (which was due to an additional roommate who had a child and two cats), the fact that the ***other*** flat was later rented to two women, the fact that Beverly Laakko had expressed concern that the child in the ***other*** flat had been left home alone and that children

might fall out of a tree (a rare chestnut into which Petitioners had nailed boards), the fact that a toy had been found in the sewer pipes, and the form of written lease (for the other flat) which listed the number of adults and children in the flat). See *id.* at 15-16.

There was thus not one iota of evidence that the raising of rent by $50.00, after three years (during which the Petitioners' family stayed the same size) was intentional discrimination based on familial status, and there was not even a mention made concerning disparate impact. The district court properly concluded:

> The facts presented to this court show that this case involves a landlord-tenant dispute only. No evidence has been presented to suggest that the landlord-tenant dispute was racially motivated or that defendants discriminated against plaintiffs on the basis of their alienage or familial status. Because plaintiffs cannot even make a *prima facie* case of housing discrimination, summary judgment must be granted on plaintiffs' claims under § 1981 and the Fair Housing Act.

*Maki* v. *Laakko*, 1994 U.S. Dist. LEXIS 14097 (E.D. Mich. 1994), slip opinion at 8 (Petitioners' App. at 22a-23a).

On appeal to the Sixth Circuit, in a rambling Brief on Appeal which contained countless misstatements of law and fact, Petitioners conceded that the material facts were undisputed (contending that ***they*** should have been granted summary judgment), and Petitioners seemed to argue that it would be discriminatory to charge higher rent for additional residents if the additional residents

were children. However, there was no evidence ***whatsoever*** that additional rent was charged to the Petitioners due to the size of their family or due to the number of children they had. Safranek seemed to be litigating some other case, not this one, yet this remained at all times a lawsuit by the Petitioners – not by any other residents – and, in this lawsuit, Petitioners did not (and could not) show intentional discrimination against them due to familial status, and they never attempted to show that there was any disparate impact by any of the Laakkos' actions.

Ultimately, the Sixth Circuit affirmed the district court on the basis of the failure of Petitioners' *prima facie* case, holding:

> We conclude that the Makis' claim that they were forced from the apartment by the Laakkos was properly dismissed on summary judgment because the facts only allow the conclusion that the Makis left voluntarily. To state a prima facie case of housing discrimination under either 42 U.S.C. § 1981 or 42 U.S.C. § 3601 et seq., a plaintiff must show the following:
>
> (1) that plaintiff is a member of a protected class;
>
> (2) that plaintiff applied for and was qualified to rent or purchase certain property or housing;
>
> (3) that plaintiff was rejected;
>
> (4) that the housing or rental property remained available thereafter. Selden Apartments v. Dep't of Housing and Urban Dev., 785 F.2d 152, 159 (6th Cir. 1986). Summary judgment was appropriate because the record indicates that the Makis were never denied housing that

they desired, and thus cannot meet the second element outlined in Selden.

Instead, the facts demonstrate that the Makis were unhappy with the rent increase, started looking for a new apartment, and reached an agreement with the Laakkos concerning when they would move. The uncontroverted testimony of the Laakkos establishes that they were willing to keep the Makis on as tenants, as long as they agreed to pay the rent increase. The Makis were given at least two chances to retain the apartment, yet refused the offer of a one-year lease, and balked at the rent increase to the extent that they refused to initial the letter notifying them of a rent increase, called a lawyer to complain about it, and only paid the increased rent for one month, in the context of an agreement to leave at the end of the month. The only evidence that the Makis were willing to continue their tenancy after the rent increase is their current claim that they were willing to stay in the apartment and pay the increased rent indefinitely.

We are confident that the record as a whole provides enough evidence to contradict this claim and that the district court could grant summary judgment without having to make any credibility determinations or otherwise impermissably weigh the evidence. The Makis' efforts to establish that they were uncomfortable in the apartment due to "harassment" serve to contradict any claims that they were happy to stay on in the apartment, yet were evicted. Counsel for the Makis summarizes their desires in his reply brief by arguing that "the only reason they wanted to leave the apartment was due to the

treatment they started to receive at the hands of the Appellees around June 1, 1993." Appellants' Reply Brief at 12. The fact that the Makis wanted to leave and were looking for another apartment, coupled with the uncontested affidavit of Attorney Michael Drew that he drew up the notice to quit tenancy as a compromise to allow the Makis sufficient time to move and yet assure the Laakkos of a date when the apartment would be open for new tenants convinces us that the Makis' claim that they were evicted is unsupported. n1

----------FTN----------

n1 Plaintiffs' counsel repeatedly attempts to contradict this affidavit by unsworn assertion. See Plaintiffs' Brief in Opposition to Defendants' Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment, pp. 4-5 filed June 27, 1994 ("Safranek informed Mr. Drew that this was not his understanding"); Plaintiffs' Response to Defendants' Brief in Opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment, p. 1, n.1 filed July 15, 1994 ("Attorney is prepared to file an affidavit contradicting Michael Drew's affidavit"); Appellants' Brief at 10 ("Attorney was called about this letter and told that no such date was agreed upon," citing the June 27 Brief); Appellants' Reply Brief at 2 ("Appellees specifically denied this alleged fact," citing the July 15 Response). However, this is all wind-up and no pitch. In the absence of opposing affidavits, the Drew affidavit remains uncontroverted.

----------END FTN----------

The harassment claim, while serving as a convenient explanation for the evidence that the

> Makis moved voluntarily, does nothing to advance their discrimination claim. ***The incidents that the Makis claim constituted harassment amount to no more than minimal friction between a landlord and tenants.*** Counsel for the Makis should have informed them that activities such as admonishments about excessive wear, use or abuse of areas they were not explicitly given the right to use by their month-to-month lease, and taking mail addressed to the "owner/resident" do not amount to harassment. ***The fact that counsel for the Makis chose to rely on such weak facts to support a claim for housing discrimination when the Makis appear to have vacated voluntarily is a telling indictment of just how meritless the claim is.*** The Makis were in no way forced from their tenancy because of harassment.

88 F.3d at 364-365 (Petitioners' App. at 7a-9a) (emphasis added).

Again, it is significant that Petitioners do not controvert the extensive facts set forth by Respondents in the district court and painstakingly reviewed by the Sixth Circuit. Instead, their Petition focuses upon what their counsel believes would be an "interesting" issue for the Court to consider (but which, as set forth *infra*, is not appropriate for consideration in this case).

That issue, concerning the charging of differential rent based upon the number of persons occupying the rental unit (which Safranek presents, disingenuously, as the number of children in a tenant's family), was found wanting by the Sixth Circuit ***not just as a matter of law, but also as a matter of fact under the particulars of this case.*** The Sixth Circuit held:

Counsel for the Makis was not, however, content merely to argue that the Makis' voluntary departure from their leasehold constituted discrimination. Rather, he also made an unprecedented argument that the rent increase that precipitated the Makis' decision to seek less expensive quarters constituted impermissible discrimination on the basis of family status.

42 U.S.C. § 3604(b) prohibits discrimination in the terms or conditions under which housing is sold or leased. The Makis have seized upon the fact that it is unlawful to discriminate on the basis of "familial status," and contend that the Laakkos decided to increase their rent because they had children, thereby discriminating against them on the basis of family status. The statute that serves as the basis for this claim makes it unlawful

> To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(b).

The Makis thus contend that the Laakkos' decision to raise their rent was illegally motivated because of the Makis' "familial status."

***This claim suffers from factual shortcomings similar to those afflicting the Makis' other claims***, and would require this court to make an unprecedented and patently ludicrous extension of the law. In his brief and at oral argument, counsel for the Makis argued that the provision of the Fair Housing Act excerpted above makes it illegal for landlords to charge additional rent

on the basis of the number of persons occupying dwellings if the "persons" are children.

Safranek argues explicitly that the familial status of children will be unprotected if a landlord can charge the same rent for two adults and one child as for three adults, because then there will have been an increase "because of" the child, even though there would have been exactly the same increase "because of" a third adult. ***Safranek is right that this is a claim of first impression, perhaps because it is a claim of such breathtaking audacity that no one ever dared to raise it before.*** Certainly, no case, article, or treatise discussing "familial status" discrimination ever thought to contemplate the idea that treating a child the same as other persons could be discrimination. All of the cases and commentators discuss the opposite possibility: that a landlord would refuse to rent or charge more if there were two adults and a child than if there were three adults. See Glover v. Crestwood Lake Section 1 Holding Corp., 746 F. Supp. 301, 303, 310. (S.D.N.Y. 1990). Indeed, the essence of non-discrimination is to treat persons the same, despite the alleged discriminatory condition.

Though plaintiffs make much of the fact that the plaintiffs' lease (to which defendants were not a party) states that premises will not be occupied by more than "[stated number] of adults and [stated number] of children," the rent charged was not stated or computed in terms of the composition of the family in the apartment. There is also an "extra party" clause, never invoked in this case, that specifies additional rent of $ 1.50 per day if extra persons (above the

> number specified in the lease) stay in the apartment. ***Plaintiffs' statement in their brief that defendants were charging $ 45 for each child is wholly an invention of counsel.***

88 F.3d at 365-366 (Petitioners' App. at 9a-11a) (emphasis added).

In the Petition, Safranek reiterates the fiction concerning the alleged "child charge" and misstates the record, arguing in his "Statement of the Case" that the Petitioners lived under a lease which "allowed the landlord to charge more money for each additional child the Makis had living with them." Petition, at 4.

Although Safranek's blatant misstatement cites to the Sixth Circuit opinion, the opinion, as quoted above, does not support that statement. In fact, both courts below concluded that Petitioners were month-to-month tenants – that the lease Petitioners had with the previous owners of the property had expired and that the Laakkos were not parties to the lease. See *Maki* v. *Laakko*, 88 F.3d 361, 363 (6th Cir. 1996) (Petitioners' App at 2a-3a); *Maki* v. *Laakko*, 1994 U.S. Dist. LEXIS 14097 (E.D. Mich. 1994), slip opinion at 2 (Petitioners' App. at 18a). Moreover, the lease itself had not been related to the number of children, and merely provided "that for each additional person occupying said premises – excluding visitors – the Residents agree to pay to the Owner/Agent the sum of $1.50 per day in addition to the regular rent described above." R.43, Exhibit A, para. 5. In any case, the rent increase that precipitated the dispute in this case ***could not*** have been related to the number of Petitioners' children, which remained the same throughout their tenancy.

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Thus, the courts below concluded, (1) there was no lease, much less a "lease provision"; (2) Petitioners were not charged by virtue of the number of children in the residence; (3) there was no evidence of discrimination; and (4) Petitioners failed to satisfy their *prima facie* case. The misrepresentations of Petitioners' counsel, as to the facts, as to the law, and as concerns the record, did not fool the Sixth Circuit; nor should they be countenanced by this Court.

As is clear from the Sixth Circuit's opinion, the greatest injustice perpetrated in this case is that it was brought in the first instance, causing Respondents to incur tens of thousands of dollars in attorney fees over a $50 per month rent increase.

On December 10, 1996, Petitioners' counsel extended the injustice by filing the instant Petition.

## ARGUMENT

### I. INTRODUCTION

Even aside from the core deficiencies in the Petition (i.e., that the courts below have already found that the ***facts*** do not support any claim under the Fair Housing Act), there is no legal support underlying the issue identified in the Petition.

Petitioners apparently take the position that certiorari should be granted because their attorney has identified an ***interesting*** issue for consideration (i.e., the meaning of "familial status" under 42 U.S.C. § 3602(k), discrimination against families with children, and the

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impact of disparate treatment upon peripatetic families). See Petition at 4-6. However, Petitioners fail to demonstrate any manner in which that issue has relevance ***to this case***. Indeed, it may make an interesting law review article, or an exam question for Mr. Safranek's students, but it has nothing to do with this case.

Even if the question presented was appropriate for consideration by the Court, this case would hardly be the appropriate vehicle for that consideration. Simply put, the issue had no application in this case, and the advocacy of the issue would suffer by having the issue considered in this case (as is apparent from the poorly drafted Petition submitted by the Makis). And, even if the issue applied in this case, Petitioners' case would still fail as a matter of law as the failures of Petitioners' prima facie case would remain unremedied.

## II. THE PETITION FOR CERTIORARI DOES NOT PROVIDE ANY BASIS FOR THE EXERCISE OF THIS COURT'S DISCRETION

### A. The Standard Generally Governing the Court's Exercise of Discretion

The considerations which measure the Supreme Court's exercise of discretion concerning a petition for certiorari are concisely stated in the Rules of the United States Supreme Court. Rule 10(a), which is apparently the rule upon which Petitioners place their hopes, provides for review where:

> a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same

> important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. . . .

The Petition obviously is based upon the first clause of Rule 10(a), arguing "confusion" in the courts, but not including among the issues any state law cases or any departures from the accepted and usual course of judicial proceedings. As set forth in the succeeding portions of this Brief, however, there is no conflict between this case and the other cases cited in the Petition.

### B. The "Question Presented" By the Petition Is Inapplicable to the Facts In This Case

The Question Presented at the outset of the Petition ("Does the protection afforded to 'familial status' under the Fair Housing Act, 42 U.S.C. § 3601 et seq., prevent landlords from charging additional rent for each additional child?") is simply inapplicable in this case.

As discussed *supra*, Petitioners simply misstate the record in their discussion of the decision below. In the courts below, there was no direct or indirect evidence of discrimination on the basis of familial status. Rather, there was only an anecdotal reference to the raising of rent in ***another*** apartment. And, Petitioners simply misrepresent the record concerning the anecdote, and fail to relate it in any way to the Petitioners' situation. The record reveals that the rental rate increase on the other flat was "because of additional people and wear and tear

on the apartment, and the additional animals." R.51, Exhibit D (Deposition of B. Laakko, at page 21). Moreover, the situation in that other rental unit was clearly different from the Petitioners' situation, in which there was no increase in the number of residents.

Thus, Petitioners ***were not*** charged additional rent for each additional child. They were charged the same rent throughout their occupancy, before Respondents purchased the property and after. They had the same number of children when they moved in as when they moved out. There was only a rent increase, after several years of no increases, without any change of the renter's family status.

Any rental calculation on the basis of the number of Petitioners' children was, in the words of the Sixth Circuit, "wholly an invention of counsel."

### C. Petitioners Do Not Provide Any Cogent Reason For The Supreme Court to Grant the Writ of Certiorari

Just as Petitioners' counsel sought to invent facts in the courts below, he likewise is seeking to create from whole cloth a "reason" for granting the writ.

The Petition begins with the observation that "many of the federal courts have ignored or failed to recognize the legislative definition of 'familial status' and have simply given their own gloss to that term." Petition, at 4-5. That may or may not be true, and it may or may not be of interest to the legislature when further amendment of the Fair Housing Act is considered. However, the

observation does not create a ***case or controversy*** for this Court's consideration. In this case, the Sixth Circuit did not ignore or fail to recognize the legislative definition of familial status, and provided no gloss to that term.

Rather, the Sixth Circuit recognized that the Petitioners (aside from the lack of ***factual*** support for their claim) were making an unprecedented argument that the Fair Housing Act mandates discrimination in favor of a family with children (i.e., that a landlord cannot charge a higher rent for additional occupants if, and only if, the additional occupants are children).

Contrary to Petitioners' argument in the Petition, the Sixth Circuit's opinion, that a neutral policy does not violate the policy of the Fair Housing Act, does not "eviscerate" the statutory definition of familial status, or change the definition into one dealing with age. The statutory definition remains intact – one may not discriminate against a renter because the renter has children (and there was no evidence that such discrimination occurred in this case).[2] And, Petitioners' view that the Sixth Circuit has changed the statutory term to define "age" simply makes no sense.

Nor does the Sixth Circuit's opinion create any conflict with other circuits. Once again, the rhetoric of Petitioners' counsel has outstripped the bounds of rational argument. Thus, there is no conflict between this case and

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[2] Of course, the Sixth Circuit's entire discussion of familial status was an alternative analysis, in *dictum*, since the court found no evidence of discrimination on the basis of familial status and no charging of differential rent based on the number of occupants.

the court's holding in *Mountain Side Mobile Estates* v. *Secretary of Housing and Urban Development*, 56 F.3d 1243 (10th Cir. 1995) or between this case and *Pfaff* v. *U.S. Department of Housing and Urban Development*, 88 F.3d 739 (9th Cir. 1996). In each of those cases, by Petitioners' admission, the issues were those of numerical occupancy restrictions and business necessity, and the cases further involved allegations concerning the discriminatory *impact* of maximum occupancy rules. Yet, there is no occupancy standard or exclusion in this case, and there were no allegations concerning discriminatory impact. Again, there was simply no evidence in this case that the rent increase had anything to do with the size of Petitioners' family or the number of persons occupying the premises.

Similarly, there is no conflict between this case and *United States* v. *Badgett*, 976 F.2d 1176 (8th Cir. 1992), in which a numerical occupancy restriction was shown to have a disparate impact on a protected class. Again, in this case there was no numerical occupancy restriction, and no allegations (much less proofs) of disparate impact.

Finally, Petitioners cite *Soules* v. *United States Department of Housing and Urban Development*, 967 F.2d 817 (2d Cir. 1992), but fail to identify any conflict between that case and this one. Indeed, any review of the Second Circuit's opinion in that case reveals that any comparison of the two cases is like apples and oranges. In this case, there was no refusal to rent, and no connection whatsoever between the rent increase and the "familial status" of the Petitioners – facts uncontroverted when the Laakkos brought their motion for summary judgment and ultimately confirmed by the opinions of both of the lower courts.

Contrary to the academic discourse of Petitioners' counsel, this case does not portend a return to the days before child labor laws were enacted. The Fair Housing Act remains intact, and familial status remains protected against discrimination – where there are proofs of discrimination on the basis of familial status. Thus, the Petition itself cites numerous examples of enforcement actions taken by the Secretary of Housing and Urban Development, in which charges have been brought and successfully resolved where occupancy restrictions and exclusions were germane.

Contrary to Petitioners' unsupported statement, those HUD cases do not show any "differing and confused approaches," as in each one the Act was vindicated and enforced, under a variety of factual scenarios – each of which led to a consent order. See *Wagner* v. *Orosz*, 1995 WL 108210 (H.U.D.A.L.J.) (Initial Decision and Consent Order, March 2, 1995); *Beardshear* v. *Bitzanakis*, 1994 WL 681040 (H.U.D.A.L.J.) (Initial Decision and Consent Order, Oct. 27, 1994); *Miller* v. *Beninato*, 1994 WL 270071 (H.U.D.A.L.J.) (Initial Decision and Consent Order, May 3, 1994); *Metropolitan Milwaukee Fair Housing Counsel, Inc.* v. *Lake Country Publications*, 1994 WL 271082 (H.U.D.A.L.J.) (Initial Decision and Consent Order, Jan. 26, 1994; *Garrett* v. *Bathalter*, 1993 WL 668290 (H.U.D.A.L.J.) (Initial Decision and Consent Order, May 10, 1993); *Hauge* v. *Gil-Her, Ltd.*, 1992 WL 613678 (H.U.D.A.L.J.) (Initial Decision and Consent Order, Nov. 24, 1992).

The existence of different factual scenarios, and even different settlements, does not translate to "differing" or "confused" approaches by the Department. However,

even if those cases revealed hopeless confusion in policies being followed by the Department of Housing and Urban Development, this is hardly the forum for unifying Departmental policy, and this case (which in no way involves the Department) is hardly the vehicle for such unification.

In this case, in contrast to the HUD actions cited by Petitioners, there were no charges brought (and to Respondents' knowledge, no charges sought), and most importantly, there was no evidence of familial status discrimination. There was only argument, on appeal, without any basis in law or in fact. From such materials, Supreme Court cases are not made.

## CONCLUSION

The Petition represents no more than an attempt to prolong this case by injecting issues which are without basis in law or in fact, and arguments which were not before the district court, and which were not raised on appeal prior to the Petition for Rehearing.

The United States Supreme Court is not the appropriate forum for Petitioners to shift directions and attempt to support a case which they did not present to the district court and which is factually unsupported and unsupportable. Moreover, this is not the appropriate case for the Court to consider the issue presented, since in this case it is a purely academic issue which does not have an underlying case or controversy.

Respondents respectfully request, therefore, for all the foregoing reasons, that this Honorable Court deny Petitioners' Petition for Writ of Certiorari.

Respectfully submitted,

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